IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	**CRIMINAL NO. 2:05-CR-119-MEF**
DON EUGENE SIEGELMAN	)	
PAUL MICHAEL HAMRICK	)	
GARY MACK ROBERTS, and	)	
RICHARD M. SCRUSHY.	)	

RESPONSE TO DEFENDANT SCRUSHY'S SECOND MOTION TO SUPPLEMENT RECORD IN JURY CHALLENGE AND MOTION FOR EXTENSION OF TIME

The United States of America, by and through Louis V. Franklin, Sr., Acting United States Attorney for the Middle District of Alabama, and Andrew C. Lourie, Acting Chief of the Public Integrity Section of the Criminal Division of the United States Department of Justice, and hereby files its Response to Defendant Scrushy's Second Motion to Supplement Record in Jury Challenge and Motion for Extension of Time (hereinafter, the "Motions"). The United States submits that the Motions should be denied for the following reasons:

The Motions are nothing more than a veiled attempt to postpone the Court's ruling on the jury selection challenge until after the jury is sworn. Yet, the Court must rule, before trial, on any pretrial motion that presents any issue that is segregable from the evidence to be presented at trial. United States v. Adkinson, 135 F.3d 1363, 1369 n. 11 (11th Cir. 1998). See Fed. R. Crim. P. Rule 12(d), which provides in relevant part, "The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal." See also United States v. Barletta, 644 F.2d 50, 53-59, 59 (1st Cir. 1981) (if a motion is properly raised before trial, and the issue "is sufficiently capable of determination without the trial of the general issue, it may then find no 'good

cause' for deferring a ruling under 12(e), since to do so would adversely affect the government's right to appeal under § 3731"). If the Court fails to rule on Defendants' motion to dismiss before jeopardy attaches, but subsequently grants that motion, the United States would be barred from an appeal under 18 U.S.C. § 3731. Furthermore, not only would the United States be barred from appealing the dismissal of the indictment, it would be completely barred from any future prosecution of Defendants Siegelman, Scrushy, and Hamrick for the offenses charged in that indictment. United States v. Ramirez, 884 F.2d 1524 (1st Cir. 1989) (defendants discharged from any further prosecution where the district court had granted a motion for mistrial, after jeopardy had attached, on its finding a substantial violation in the random-selection requirement of the Jury Selection and Service Act, 28 U.S.C. § 1866 – this being so even though the district court had incorrectly ruled that a substantial violation of the Act had occurred). Furthermore, it strains credulity for these Defendants to continue their unrelenting attack on the underrepresentation of African-Americans on juries in this District when the Defendants have just concluded a two-day selection process that resulted in a jury for this case composed of seven African-Americans and five Caucasions.

Logic, principles of fundamental fairness, and well-established precedent compel this Court to deny the Motions.

Respectfully submitted this the 21th day of April, 2006

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CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted,

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